

Remarks

In the Office Action of April 27, 2004, the Examiner rejected all the claims under 35 U.S.C. § 112, first paragraph, for failing to comply with the written description requirement. The Examiner argued that the application had not used the word “substrate,” which violated the description requirement.

In the previous Notice of Allowability dated January 23, 2004, the Examiner had interpreted the term “substantial” in claim 8, last line, to mean “at least 50%,” citing E.W. Bliss Co. v. Cold Metal Process Co., 122 U.S.P.Q. 238 (N.D. Ohio ____).

Applicants respectfully traverse the rejection under section 112. Applicants acknowledge the language in M.P.E.P. § 2163.02 that presumably supports the Examiner’s position. “If a claim is amended to include . . . terminology not present in the application as filed, involving a departure from, addition to, or deletion from the disclosure of the application as filed, the examiner should conclude that the claimed subject matter is not described in that application.” But, the use of the word “substrate” in the claims does not rise to the level of “a departure from, addition to, or deletion from the disclosure of the application as filed.”

At page 4, lines 1-19 of the application, the “ancillary substances C” are defined as fusible sugars, sugar alcohols, and sugar substitutes (the “ingredient” of Claim 8, paragraph c) and, as set forth in lines 17-19, “Further ancillary substances C comprise

flavourings, sweeteners, lubricants, flow regulators, disintegrants and bulking agents such as, for example, starch and starch derivatives, cellulose and cellulose derivatives, polyethylenes.” Thus, the “ancillary substance” of the specification is the substrate of Claim 8. The substrate, in turn comprises the “ingredient” and other ingredients, which comprise flavourings, sweeteners, lubricants, flow regulators, disintegrants and bulking agents such as, for example, starch and starch derivatives, cellulose and cellulose derivatives, polyethylenes.”

The Examiner’s attention is also directed to page 4, lines 27-29 of the application, where component C is defined as having “1 to 60, preferably 15 to 30 (sugar, sugar alcohol, or sugar substitute) and, where appropriate, 1 to 50, preferably 5 to 15 (other ancillary substances).

Thus, the application demonstrates that applicants had possession of the claimed invention at the time they filed the application. The Examiner’s attention is drawn to M.P.E.P. § 2163.02, which states, “The subject matter of the claim need not be described literally (i.e., using the same terms or *in haec verba*) in order for the disclosure to satisfy the description requirement.

Applicants also wish to clarify the Examiner’s comments regarding the term “substantial” in the Notice of Allowance. The Examiner’s attention is directed to Claim 8. In that claim, the words “substantial” and “substantially” do not appear on the last line of the claim, as amended. Rather, the claim states, “ . . . wherein at least one of said CO₂

donor and said acidic component is dispersed *substantially* throughout a substrate having said ingredient as a *substantial* constituent” (Emphasis added). Applicants believe that the Examiner’s comment in the Notice of allowance was directed to the “as a substantial constituent” phrase, not the “dispersed substantially throughout” language or some other claim language.

Withdrawal of the rejection and allowance of the claims is earnestly solicited.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Richard S. Bullitt", with a stylized flourish at the end.

Richard S. Bullitt
Reg. No. 30,733

Bayer HealthCare, LLC
36 Columbia Road
Morristown, NJ 07962